

July 20, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
LOUISIANA ENERGY SERVICES, L.P.) Docket No. 70-3103
)
(National Enrichment Facility))
)

NRC STAFF RESPONSE TO MOTION ON BEHALF OF INTERVENORS
NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN
FOR ADMISSION OF SUPPLEMENTAL AND ADDITIONAL
LATE-FILED CONTENTIONS UNDER 10 C.F.R. 2.309(c)

INTRODUCTION

Pursuant to the Board's Order of July 11, 2005,¹ and the Board's ruling setting forth a general schedule for this proceeding,² the Nuclear Regulatory Commission Staff ("Staff") hereby responds to the motion filed by Nuclear Information and Resource Service and Public Citizen ("NIRS/PC")³ requesting the admission of supplemental and late-filed contentions. As discussed below, upon consideration of the factors that govern the admission of late-filed contentions and the Commission's standards for admissibility of contentions, only two aspects of NIRS/PC supplemental basis (E) to Contention EC-5/TC-2 are admissible.

¹ *Order* (Granting Ruling Deferral and Filing Extension Requests and Conforming Prior Scheduling Order to General Schedule), July 11, 2005.

² *Memorandum and Order* (Memorializing and Ruling on Matters Raised in Conjunction with August 3, 2004 Conference Call and Setting General Schedule for Proceeding), August 16, 2004.

³ "Motion on Behalf of Intervenors Nuclear Information and Resource Service and Public Citizen for Admission of Supplemental and Additional Late-Filed Contentions under 10 C.F.R. 2.309(c)," July 5, 2005, ("NIRS/PC Motion").

BACKGROUND

NIRS/PC filed its petition to intervene and contentions with regard to the application by Louisiana Energy Services, L.L.P., (“LES”) to construct and operate the proposed National Enrichment Facility (“NEF”) on April 6, 2004.⁴ NIRS/PC sought admission of several contentions, one of which alleged that LES did not have a plausible strategy for disposal of the depleted uranium (“DU”) that would be produced. Other contentions proffered by NIRS/PC challenged the costs LES attributed to decommissioning, including deconversion and disposal of DU. NIRS/PC Contentions at 34-38. The Board granted NIRS/PC’s intervention petition on July 19, 2004,⁵ and admitted certain contentions as supported by the bases set forth in its decision.

The contention challenging the decommissioning costs presented by LES (EC-5/TC-2) was admitted premised on the following bases: (a) The contingency factor used by LES is too low, (b) the cost of capital used by LES is too low, and (c) the costs are based on an incorrect assumption that they relate only to low-level waste. LBP-04-14, 60 NRC at 67-68, 78.

In addition, the NIRS/PC contention regarding plausible strategy (EC-3/TC-1) was admitted by the Board based on three alleged deficiencies in the Environmental Report. *Id.* Specifically, this contention was based on NIRS/PC’s claims (a) that the statement by LES that ConverDyn may have access to an exhausted uranium mine for disposal was not sufficient to support a plausible strategy determination, (b) that the representation that discussions had been held with Cogema regarding a private conversion facility were without substance, and (c) that the representation by LES that disposal of DU could be accomplished by transfer to

⁴ “Petition to intervene by Nuclear Information and Resource Service and Public Citizen” and “Contentions on the Construction Permit/Operating License Application for the National Enrichment Facility Made by Nuclear Information and Resource Service and Public Citizen,” April 6, 2004.

⁵ *Louisiana Energy Services, L.P. (National Enrichment Facility)*, LBP-04-14, 60 NRC 40 (2004).

DOE was not plausible.

Pursuant to the Board's ruling setting forth a general schedule for this proceeding,⁶ a deadline of October 20, 2004, was established for late-filed contentions, following the scheduled September, 2004, issuance of the Draft Environmental Impact Statement, NUREG 1790 (Sept. 2004) ("DEIS"), and July 5, 2005, for contentions following issuance of the Final Environmental Impact Statement, NUREG 1790 (June 2005) ("FEIS"), and the Safety Evaluation Report, NUREG 1827 (June 2005) ("SER"). NIRS/PC filed late contentions on October 20, 2004, in accordance with the schedule deadline. On November 22, 2004, the Board issued its order⁷ regarding NIRS/PC's October 2004 late-filed contentions. The Board declined to admit any late contention relating to the issue of classification of DU, but admitted an additional basis for EC-5/TC-2 alleging that LES had failed to provide a relevant estimate for the cost of converting and disposing of DU. *Id.* at 16-17. On May 3, 2005, the Board admitted an additional basis to EC-5/TC-2.⁸

NIRS/PC filed motions⁹ dated May 16, 2005, and May 20, 2005, requesting the admission of late-filed supplements to the admitted contentions and bases challenging LES's

⁶ *Memorandum and Order* (Memorializing and Ruling on Matters Raised in Conjunction with August 3, 2004 Conference Call and Setting General Schedule for Proceeding), August 16, 2004.

⁷ *Order* (Ruling on Late-Filed Contentions), November 22, 2004 at 15 (unpublished).

⁸ *Memorandum and Order* (Ruling on NIRS/PC Late-Filed Contentions and Providing Administrative Directives), May 3, 2005, slip op. at App. A ("May 2005 Order").

⁹ "Motion on Behalf of Intervenors Nuclear Information and Resource Service and Public Citizen for Admission of Late-Filed Contentions Concerning LES Disposal Strategy," May 16, 2005 ("Late-Filed Motion A"), "Motion on Behalf of Intervenors Nuclear Information and Resource Service and Public Citizen for Admission of Late-Filed Contentions Concerning Dispositioning Cost Estimates," May 16, 2005 ("Late-Filed Motion B"), and "Motion on Behalf of Intervenors Nuclear Information and Resource Service and Public Citizen for Admission of Additional Bases for Late-Filed Contentions Concerning Dispositioning Cost Estimates," May 20, 2005 ("Late-Filed Motion C").

disposal strategy and dispositioning cost estimates. In its June 30, 2005 Order,¹⁰ the Board rejected the contention amendments and supplements. Following the Staff's issuance of the FEIS and SER in June, NIRS/PC filed the late-filed supplements to which the Staff hereby responds in accordance with the scheduled deadline of July 5, 2005.

DISCUSSION

I. Legal Standards for Admission of Late-Filed Contentions

The criteria to be considered when determining the admissibility of a late-filed contention are set forth in 10 C.F.R. § 2.309(c)(1)(i)-(viii), in relevant part as follows:

- (i) Good cause, if any, for the failure to file on time;
- (v) The availability of other means whereby petitioner's interest will be protected;
- (vi) The extent to which petitioner's interests will be represented by existing parties;
- (vii) The extent to which petitioner's participation will broaden the issues or delay the proceeding; and
- (viii) The extent to which petitioner's participation may reasonably be expected to assist in developing a sound record.

10 C.F.R. § 2.309(c)(1)(i)-(viii).¹¹

NIRS/PC, as the proponent of the admission of its late-filed contentions, bears the burden of demonstrating that a balancing of these factors weighs in favor of admission by affirmatively addressing the lateness factors in its petition. Thus, NIRS/PC must demonstrate that a balancing of the factors warrants overlooking the lateness of their contentions.

Boston Edison Co. (Pilgrim Nuclear Power Station), ALAB-816, 22 NRC 461, 466 n.22 (1985).

Here, because NIRS/PC is already a party to the proceeding, factors (ii) and (iii) are not

¹⁰ *Memorandum and Order* (Ruling on NIRS/PC Late-Filed Contention Amendments), June 30, 2005 ("June 2005 Order").

¹¹ Because they relate primarily to standing to intervene, factors (ii), (iii) and (iv) are not relevant to the issue of whether an existing party's late-filed contention's should be admitted. See May 2005 Order at 5.

relevant.¹²

It has long been held that the first factor, good cause for lateness, carries the most weight in the balancing test. *Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-00-27, 52 NRC 216, 221 (2000); *aff'd*, CLI-04-04, 59 NRC 31 (2004). Absent a showing of good cause, a compelling showing that the remaining factors outweigh the lack of good cause for the untimely filing is necessary. See, *Commonwealth Edison Co.* (Braidwood Nuclear Power Station, Units 1 and 2), CLI-86-8, 23 NRC 241, 244 (1986).

In making a judgment about good cause, emphasis is placed on when sufficient information was made available to the petitioner so as to make it possible for the petitioner to raise and frame the contention with reasonable specificity and basis. *Private Fuel Storage* (Independent Spent Fuel Storage Installation), LBP-99-43, 50 NRC 306, 313 (1999), *citing*, *Duke Power Co.* (Oconee Nuclear Station, Units 1, 2 and 3), CLI-99-11, 49 NRC 328, 338 (1999). Good cause does not exist when the late-filed contentions are not based on new information arising after the original deadline and, therefore, could have been included in a timely petition. In this regard, 10 C.F.R. § 2.309(f)(2) provides:

On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement . . . that differ significantly from the data or conclusions in the applicant's document.

Thus, where a contention purportedly is based on the existence of a document recently made publically available, an important consideration in assessing good cause for lateness is the extent to which the contention could have been submitted prior to the document's availability. See *Public Service Co. Of New Hampshire* (Seabrook Station, Units 1 and 2), ALAB-737, 18 NRC 168, 172 n.4 (1983); *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage

¹² See, June 2005 Order at 6 n.6.

Installation), LBP-98-29, 48 NRC 286, 292 (1998).

In addition to demonstrating that a balancing of the late-filing criteria warrants admission, the petitioner must meet the requirements for admissible contentions in 10 C.F.R. § 2.309(f)(1). That regulation provides that a contention must include: (1) a specific statement of the issue of law or fact raised, (2) a brief explanation of the basis for the contention, (3) a demonstration that the issue is within the scope of the proceeding, (4) a demonstration that the issue is material to the findings the NRC must make regarding the action which is the subject of the proceeding, (5) a concise statement of the alleged facts or expert opinions supporting the contention and (6) sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.

II. Contention EC-3/TC-1

As presently admitted, NIRS/PC's Contention EC-3/TC-3 reads as follows:

Petitioners contend that Louisiana Energy Service, L.P., (LES) does not have a sound, reliable, or plausible strategy for private sector disposal of the large amounts of radioactive and hazardous Depleted Uranium Hexafluoride ("DUF₆") waste that the operation of the plant would produce in that:

(A) The statement (LES Environmental Report (ER) 4.13-8) that a ConverDyn partner, General Atomics, "may have access to an exhausted uranium mine. . . where depleted U₃O₈ could be disposed" represents a grossly inadequate certitude for a "plausible strategy" determination, particularly for a radioactive and hazardous substance which has been accumulating in massive quantities in the United States for fifty-seven years without a plausible disposal program.

(B) Similarly, the statement that "discussions have recently been held with Cogema concerning a private conversion facility (ER 4.1308) is without substance.

NIRS /PC seeks to amend this contention to add the following additional bases:

(D) Disposal of DU at the proposed Andrews County, Texas disposal site of WCS would not constitute a plausible strategy because WCS is not licensed to receive such waste and would not perform satisfactorily in containing such waste. Due to the effects erosion, disposal of DU from the NEF at the proposed WCS site is likely to violate the dose limit contained in 10 CFR Part 61, Subpart C.

(E) The FEIS states that “under its radioactive materials license issued by the State of Utah, Envirocare is authorized to accept for disposal the quantities of depleted uranium oxides expected to be generated by the conversion of the proposed NEF’s DUF₆. (FEIS at 2-33). Further, the FEIS states that the Envirocare site has several site-specific factors that contribute to its acceptability for DU disposal. (FEIS at 4-63). However, disposal of DU at the Envirocare site would not constitute a plausible strategy. The statements referred to did not appear in the DEIS. These statements are inaccurate or outdated, and the Envirocare site would not support a plausible strategy, for the reasons that:

- a. Depleted uranium from the NEF would not constitute Class A low level waste for purposes of disposal at the Envirocare site. The issue of depleted uranium’s classification under 10 CFR61.55 has not been determined by the Commission and DU would not be classified as Class A waste under the standards used by the Commission in issuing 10 CFR Part 61. The Envirocare site is prohibited by law as well as license conditions from receiving LLRW other than Class A waste.
- b. Disposal of DU from the NEF at the Envirocare site is likely to violate the dose limit contained in 10 CFR Part 61, Subpart C.
- c. Conditions of the current Envirocare license amendment would probably prohibit the disposal of bulk DU from the NEF at the site.

NIRS/PC Motion at 13, 16-17.

A. Application of the Late Filing Criteria to NIRS/PC’s Supplement to Contention EC-3/TC-1

With regard to Basis (D), NIRS/PC states that it has good cause for filing at this time because it could not have advanced this contention until LES’s plan to dispose of depleted uranium (“DU”) at the WCS site was disclosed. Motion at 16. NIRS/PC made this same claim when it filed contentions on May 16, 2005, challenging the plausibility of utilizing WCS as a disposal site for DU,¹³ and citing as new information a Memorandum of Understanding between LES and WCS on January 31, 2005, regarding negotiations underway between the parties regarding the possible use of the site for disposal of DU. *Id.* at 4. In ruling on the admissibility of that contention, the Board found this to be the “trigger date” from which NIRS/PC’s good cause for filing with regard to the WCS site.¹⁴ Based on that finding, the Board ruled that

¹³ Late-Filed Motion A at 2.

¹⁴ June 2005 Order at 8.

NIRS/PC did not have good cause for failing to file a contention based on that information until mid-May. *Id.* at 8-9. Based on this reasoning, it is clear that NIRS/PC does not have good cause for advancing another basis relating to the WCS seven weeks later.

With regard to Basis (E), NIRS/PC states that this aspect of the contention could not have been advanced until now because it is premised upon recent changes in control of Envirocare, changes in state law, changes in the Envirocare permit and the FEIS identification of Envirocare as the likely disposal site. NIRS/PC Motion at 20. First, the issuance of the FEIS does not provide any new information upon which NIRS/PC relies for this new basis. The fact that Envirocare was a potential disposal site was explicitly discussed in the application submitted by LES and in the DEIS in the discussion of disposal options. DEIS at 2-31 to 32, 4-34, 4-37, 4-56 and D-8. Further, contrary to the claims of NIRS/PC, the FEIS does not eliminate any of the other possibilities at options, but merely states that it is assumed that disposal would be at a site licensed to accept the material, and that "Envirocare is authorized to accept for disposal the quantities of depleted uranium oxides expected to be generated by the conversion of the proposed NEF's DUF₆" FEIS at 2-33.

With regard to NIRS/PC's claim that this basis is premised on alleged changes in control of Envirocare, state law and changes to the Envirocare permit, it is clear that, except with regard to an amendment to the Envirocare license, the alleged changes are not the basis for NIRS/PC's new basis for this contention. Instead, NIRS/PC once again attempts to resurrect the issue of whether DU may be considered Class A low level waste for the purpose of disposal¹⁵ and whether shallow land disposal of DU is plausible in view of the Commission's

¹⁵ This issue was raised in NIRS/PC's original petition ("Contentions on the Construction Permit/Operating License Application for the National Enrichment Facility Made by Nuclear Information and Resource Service and Public Citizen," April 6, 2004, at 27-31 and disposed of by the Commission in *Louisiana Energy Services, L.P.*, CLI-05-05, 61 NRC 22, 34 (2004).

standards.¹⁶ These are matters which NIRS/PC has already raised and therefore does not have good cause for raising again now as a late filed contention. Notwithstanding NIRS/PC's allegation that the issue of Envirocare's authority is based on a change in law, the substance of their argument is that Envirocare's license, which has never permitted acceptance of waste other than Class A, will apparently not be revised to accept Class B or C wastes. NIRS/PC Motion at 17-18. This is hardly new information that warrants submission of a late-filed contention.

With respect to NIRS/PC's argument that Amendment 22 to the Envirocare waste permit will likely prohibit DU in the amounts produced by the NEF, NIRS/PC states that the amendment was enacted by the State of Utah on June 13, 2005. While this change was sufficiently recent to satisfy the issue of good cause for filing at this time, as discussed below, the amendment referenced is completely unrelated to the acceptance of DU. Nevertheless, NIRS/PC has good cause for waiting until now to raise an issue based on the amendment.

For these reasons, the good cause for late filing factor (i) only weighs in favor of admission with respect to Basis (E)(c). With regard to the remaining factors governing the admission of late filed contentions, NIRS/PC has already had ample opportunity to raise issues regarding disposal of DU, both in hearing and through the opportunity to comment on the Staff's DEIS. In addition, the Board will be conducting a mandatory hearing to consider, among other things, the adequacy of the Staff's environmental review. Thus, late filing factors (v) and (vi) weigh against admission. With regard to factor (vii), there is no question that permitting additional environmental contentions will broaden the issues before the Board and this factor therefore also weighs against admission. Finally, as discussed below, NIRS/PC has not raised

¹⁶ NIRS/PC raised this issue in new basis (E) of TC-3 in "Motion on Behalf of Intervenors Nuclear Information and Resource Service and Public Citizen for Admission of Late-Filed Contentions," February 2, 2005 at 17-18, and rejected by this Board as untimely in Memorandum and Order (Ruling on NIRS/PC Late-Filed Contentions and Providing Administrative Directives), May 3, 2005, at 7-8.

issues which will contribute to a sound record. In fact the only basis for which they have established good cause for late filing is based on a misreading of the Enviocare permit. Accordingly, when all factors are considered, the late filing criteria weigh against admission of these new bases.

B. Admissibility of NIRS/PC's Supplement to EC-3/TC-1

In Basis (D) NIRS/PC argues that disposal of DU at WCS cannot be part of a plausible strategy because WCS has not been licensed to receive the waste and will not be a suitable site for such disposal. This is essentially the same claim NIRS/PC raised in the late filed contentions filed on May 16, 2005,¹⁷ in which NIRS/PC proposed to supplement this same contention to allege that disposal by WCS was not plausible because the WCS application to dispose of low-level radioactive waste, filed with the State of Texas, was deficient. Late-Filed Motion A at 7-8, 11-12. On June 30, 2005, this Board found the proposed supplement to this contention inadmissible because the matter of whether the application before the State of Texas was adequate is beyond the jurisdiction of this Board.¹⁸ Because Texas is the licensing authority, it will be the responsibility of the State to determine whether any applicable performance criteria for disposal are satisfied.¹⁹ This supplement must therefore be rejected for the same reason.

In Basis (E), NIRS/PC claims that statements in the FEIS are inaccurate or outdated, and that one of the options considered -disposal at Enviocare - will not be plausible. Fundamentally, these claims do not raise a litigable issue concerning the Staff's NEPA review

¹⁷ "Motion on Behalf of Intervenors Nuclear Information and Resource Service and Public Citizen for Admission of Late-Filed Contentions Concerning LES Disposal Strategy."

¹⁸ Memorandum and Order (Ruling on NIRS/PC Late-Filed Contention Amendments), June 30, 2005, at 10-11.

¹⁹ Texas has promulgated regulations which are identical to the Commission's regulations at 10 C.F.R. §§ 61.40, 61.41, 61.42, 61.43 and 61.44.

of disposal options and are inadmissible for this reason. As is clear from the FEIS, the Staff considered a number of disposal options available for the disposal of DU generated at the NEF. Specifically, the Staff determined that disposal could potentially be at Barnwell, Hanford, Envirocare, the Nevada Test Site, or at WCS. FEIS at 2-31 to 2-33. Over time, LES will necessarily choose an option and events will occur which will make certain options more or less feasible. The fact that this will happen does not in any way indicate a shortcoming in the FEIS. The obligation of the Staff under NEPA is to consider the environmental impacts of all reasonably foreseeable disposal paths - a matter that NIRS/PC does not dispute.

In addition, the specific reasons that NIRS/PC cites for concluding that disposal at Envirocare will not be feasible do not raise any litigable issue in this proceeding because they impermissibly challenge Commission regulations or are not adequately supported by factual citation or expert testimony. The Commission has already disposed of NIRS/PC's claim that DU from the NEF would not constitute low-level radioactive waste²⁰ and NIRS/PC's claim that material containing uranium should be considered other than Class A waste is a challenge to the Commission's regulations in 10 C.F.R. § 61.55(a)(6).²¹ This Board has already rejected NIRS/PC claims in subsection (b) as outside its jurisdiction because it relates to the adequacy of an application pending before the State of Texas. Finally, NIRS/PC's argument that Amendment 22 of Envirocare's license would prohibit disposal of the amount of DU that will be generated by the NEF is simply incorrect. As explained in NIRS/PC's supporting expert statement, Amendment 22 specifically applies only to a "Custom Source - 55 gallon drum containing Depleted Uranium shavings in a homogenous concrete mix."²² This is in fact a

²⁰ *Louisiana Energy Services, L.P.* (National Enrichment Facility) CLI-05-05, 61 NRC 22 (2005).

²¹ The regulation explicitly provides that if radioactive waste does not contain any nuclides listed in either Table 1 or 2 (neither of which include uranium), it is Class A.

²² IEER Report at 7-8, citing Envirocare 2005 p. 2.

calibration source used by Envirocare. Thus, the amendment does not apply to DU accepted for disposal. The statement by NIRS/PC's expert that this limitation on possession of a calibration source "makes it very unlikely that the far larger quantities being considered could be possessed by Enviorcare if sent from a deconversion facility for the proposed NEF or from the DOE," *Id.*, is completely unsupported and constitutes no more than speculation.

IV. Contention EC-5/TC-2

As presently admitted, NIRS/PC's Contention EC-5/TC-2 reads as follows:

Petitioners contend that Louisiana Energy Services, L.P., (LES) has presented estimates of the costs of decommissioning and funding plan as required by 42 U.S.C. 2243 and 10 C.F.R. 30.35, 40.36, and 70.25 to be included in a license application. See Safety Analysis Report 10.1 through 10.3; ER 4.13.1. Petitioners specifically contest the sufficiency of such presentations as based on (1) a contingency factor that is too low; (2) a low estimate of the cost of capital; (3) an incorrect assumption that the costs are for low-level waste only; and (4) the lack of any relevant estimate of the cost of converting and disposing of depleted uranium, given it does not rely upon the three examples – the 1993 CEC estimate, the LLNL report, and UDS contract – cited in its application.

LES has presented additional estimates for the costs of deconversion, transportation, and disposal of depleted uranium for purposes of the decommissioning and funding plan required by 42 USC § 2243 and 10 CFR §§ 30.35, 40.36, and 70,25. See LES response to RAI dated January 7, 2005. Such presentations are insufficient because they contain no factual bases or documented support for the amounts of the following particular current LES estimates, i.e., \$2.69/kgU for conversion, \$1.14/kgU for disposal, \$0.85/kgU for transportation, and a total of \$5.85/kgU including contingency, and cannot be the basis for financial assurance.

NIRS /PC seeks to amend this contention to add the following:

(C) LES's submission of additional material concerning the costs of deconversion, transportation, and disposal of DU is reflected in the Safety Evaluation Report, NUREG-1827 (June 15, 2005) ("SER") (at pp. 10-11, 10-12). The SER contains certain additional statements, viz:

a. It is stated that LES adjusted the estimated cost of deconversion of DUF_6 by applying a factor for euros to dollars conversion, but the factor and its supporting bases are not explained. Without such explanation the cost data cannot be accepted.

b. It is stated that the deconversion cost estimate was adjusted for “Americanization,” referring to costs of obtaining regulatory approval and costs to convert European equipment standards to standards used in the United States, but the amounts of such adjustments and their rationale are not explained. Without such explanation the cost data cannot be accepted.

c. It is said that Staff reviewed an estimate for tails disposition from the DOE and “Staff considers that the DOE estimate provides additional assurance that the applicant’s estimate of depleted uranium disposition costs is reasonable.” However, Staff’s reasoning is not explained. In light of the fact that the DOE estimate referred to contains (sic) several unsupported assumptions (enumerated in connection with Contention EC-5/TC-2(E)), and Staff’s acceptance of those assumptions is not explained, the cost data cannot be accepted.

(D) The actual cost of dispositioning DU safely and in a manner which will adequately protect public health and the environment is likely to fall in the range of \$20.00 to \$30.00 per kgU. Such cost is significantly greater than the estimates offered by LES by reason of LES’s apparent omission or inadequate consideration of such factors as:

a. The unsuitability of the WCS site or Envirocare site for near-surface disposal, and the requirement of waste treatment and deep disposal at greater expense.

b. The need properly to consider scaling considerations in calculating, in particular, the deconversion costs.

c. The need to account properly for the potential impacts of current and future currency exchange rates in calculating costs that include a significant component from outside the U.S.

d. The need to allow as a contingency for the costs of the potential needs, in the future, of responding to the information emerging from recent research indicating that uranium may have adverse health effects not accounted for in existing regulations.

e. The need to account for the cost of delays in licensing new radioactive waste treatment and disposal facilities.

(E) LES has presented to the Commission an estimate of the cost of deconversion and disposal by DOE. (An Analysis of DOE’s Cost to Dispose of DUF₆, LMI Government Consulting, Dec. 1004)(the “DOE Report”). The SER refers to and relies upon the DOE cost estimate. (SER at 10-12). The DOE Report contains several assumptions, including:

a. The assumption that after deconversion the DU would be disposed of at Envirocare.

- b. The assumption that no costs are associated with disposition of hydrofluoric acid ("HF").
- c. Assumptions as to future operation, maintenance, and decontamination and decommissioning costs, which the DOE Report assumes will remain unchanged despite the increased operating life of the Paducah or Portsmouth facility.
- d. Assumption that LES's "pro rata" share of capital, decontamination and decommissioning costs will be based upon the amount of DU converted for LES, so that the less DU is converted for LES, the lower LES's share of such costs.
- e. Assumption that, if LES's DU is stored at the DOE plants until the DOE backlog is deconverted, DOE is not authorized to charge LES for storage costs.
- f. No contingency for unexpected occurrences appears to be included in the DOE estimates.

These assumptions are incorrect and unsupported, because:

- a. As stated above, it cannot be assumed that disposal will take place at Envirocare and the DOE has explicitly stated that additional NEPA analysis and opportunity for public comment will be required before any disposal option can be selected.
- b. It must be assumed that HF cannot be sold but must be treated and disposed of as waste.
- c. Operating costs must be assumed to increase if the facility operating life is extended.
- d. It is unlikely that DOE would agree to terms under which LES has the option to shift capital and D&D costs onto the DOE simply by not using the capacity of the plant.
- e. It is reasonable to expect DOE to charge for the costs of storage of the LES DU tails.
- f. NRC guidance requires a contingency allowance to provide for unseen cost increases.

Motion at 21-22, 25-26, 30-32.

A. Application of the Late Filing Criteria to NIRS/PC's Supplement (C) to Contention EC-5/TC-2

In proposed Basis C, NIRS/PC challenges references in the SER regarding the costs of deconversion, transportation, and disposal of DU which were provided by LES. In this manner, NIRS/PC attempts to establish good cause for filing an additional challenge to LES cost estimates at this late time by citing to the issuance of the Staff's SER as the basis for this supplemental basis. *Id.* at 21. The Staff's analysis in the SER, however, is not an issue before the Board. The issue in this proceeding is the adequacy of LES's application; therefore, contentions regarding the cost data provided by LES and relied on in the SER must be based on LES's application and the cost data provided therein. *See Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-3, 53 NRC 84, 97 (2001) (holding adequacy of application, not Staff's review or evaluation, is focus of proper contention). Because the issues in supplement C - such as the Staff's consideration of exchange rates, "Americanization," and DOE estimates of tail disposition - could and should have been raised regarding LES's application, the issuance of the SER does not establish good cause for NIRS/PC's late-filed supplement.

Indeed, NIRS/PC raised these same issues in its late filed motions filed in May 2005. Specifically, in a May 16, 2005 motion, NIRS/PC raised the exchange rate conversion issue, stating "LES has not shown that its cost estimates account for several factors that must be considered in estimating the cost of dispositioning of depleted uranium, including . . . exchange rate uncertainties . . ." Late-Filed Motion B at 8. Thereafter, in its May 20, 2005 motion, NIRS/PC asserted that "[t]here is no basis upon which the Commission could evaluate the adequacy of the treatment of such fundamental matters [such as adjustments from "Americanizing" the project] involving LES's estimate of deconversion costs . . ." Late-Filed Motion C at 6. In ruling on those motions, the Board held that to the extent NIRS/PC raised

issues material to the previously admitted contention on LES's cost estimates, NIRS/PC would have the opportunity to participate as a party on those issues. June 2005 Order at 14.

Thus, factor (i), good cause for late filing, clearly weighs against admission of this contention. Additionally, since NIRS/PC will have the opportunity to raise matters material to the admitted contention challenging LES's cost estimates for decommissioning, NIRS/PC's interest in ensuring that LES will provide adequate funding is protected and factors (v) and (vi) also weigh against admission. Regarding factor (viii), because NIRS/PC is inappropriately attempting to challenge the Staff's review rather than the LES application, admission of this basis would not be likely to assist in developing a sound record and this factor also weighs against admission. While admission of this additional supplement would not unduly broaden the issues or delay the proceeding, and factor (vii) therefore weighs in favor of admission, overall, consideration of the late filing criteria weigh against admission of this additional basis.

B. Admissibility of NIRS/PC's Supplement (C) to EC-5/TC-2

To the extent that NIRS/PC has alleged in supplement C that the Staff failed to explain the cost data in the SER, NIRS/PC is claiming that the Staff's evaluation is insufficient. NIRS/PC incorrectly focuses on the staff's review of LES's cost estimates rather than LES's application itself. Motion at 21-22. Contentions regarding whether the cost data evaluations in the SER are sufficient are inadmissible. See *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-01-3, 53 NRC 84, 97 (2001) (holding that contention must focus on adequacy of application, not adequacy of Staff review or evaluation). To the extent NIRS/PC believes that LES's cost estimates, as reflected in the SER, are insufficient, NIRS/PC's contentions must be framed on LES's application and the cost data provided therein, not the SER. *Id.* Based on the above, supplement C is not an admissible supplemental basis for this contention.

Moreover, the Board has already ruled on the materiality of the supporting provisions to supplement C in the context of NIRS/PC challenging LES's application rather than the SER. In the June 2005 Order, the Board disposed of NIRS/PC's exchange rate issue holding that "NIRS's concern with currency conversion . . . appears to lack materiality given the parties' indication in their May 23 joint report that they intend to provide dispositioning costs in 2004 dollars." June 2005 Order at 14 n.13. Therefore, this issue is also inadmissible for the reason that this Board has already ruled it is immaterial to the findings it must make on the license application.

C. Application of the Late Filing Criteria to NIRS/PC's Supplement (D) to Contention EC-5/TC-2

In Basis D, NIRS/PC again challenges the cost estimate for dispositioning DU from LES. To establish good cause for filing late, NIRS/PC claims that it had to wait until LES presented its information about deconversion by AREVA and disposal by WCS to broach these issues. Motion at 29. However, the supplement offered by NIRS/PC only references these options to the extent that NIRS/PC again repeats the claim that WCS will not be a suitable site to accept DU from the NEF and claims that scaling considerations have not been properly considered in assessing deconversion costs. NIRS/PC was notified of the existence of the MOU LES entered into with AREVA concerning deconversion at the same time it was notified of the MOU with WCS - on January 31, 2005.²³ Therefore, this is the date from which the timeliness of any new contention or supporting basis must be considered. Under the circumstances, NIRS/PC clearly does not have good cause for submitting supplemental basis (D) now, over six months after receiving that information and factor (i) therefore weighs against admission.

²³ LES provided this information along with the MOU with WCS on January 31, 2005 (ADAMS Accession No. ML050350254).

As to the remaining factors to be considered in determining whether to admit supplement D, it is significant that the subject of LES's cost estimate for the dispositioning of DU is already a subject of this hearing by virtue of the fact that the Board has admitted a basis to this contention alleging that LES's cost estimates for deconversion, transportation and disposal of DU are not sufficiently supported. Recognizing this, in response to NIRS/PC's previous attempt to raise these issues in its May 16, 2005 motion, which stated:

. . . LES has not shown that its cost estimates account for several factors that must be considered in estimating the cost of dispositioning of depleted uranium, including the likely unsuitability of depleted uranium for near-surface disposal, scaling of cost estimates to fit facilities that would meet the needs of the NEF, exchange rate uncertainties, emerging scientific information on potential uranium risks, and licensing delays[.]

Late-Filed Motion B at 8, the Board ruled that NIRS/PC could participate as a party on these issues to the extent the issues are material.²⁴ Accordingly, the interests of NIRS/PC will be protected through other means in this proceeding, and factors (v) and (vi), weigh against admission of supplement D. Since admission of this supplement would not broaden the issues currently before the Board, factor (vii) weighs in favor of admission. However, admission would not be expected to assist in developing a sound record since all material evidence relating to

²⁴ The Board stated:

. . . in a May 3 memorandum and order, this Board admitted an amendment to contention NIRS/PC EC-5/TC-2 regarding an alleged lack of support for LES "estimates for the costs of deconversion, transportation, and disposal of depleted uranium for purposes of the decommissioning and funding plan" The current amendments/supplements proffered by NIRS/PC, to the degree they relate to material matters that are within the scope of this proceeding, add nothing to that previously-admitted amendment that requires further rewording of the contention. In other words, to the extent NIRS/PC takes issue with cost estimate information provided by LES since January 7, 2005, having already admitted a contention amendment on this subject, the Board will evaluate any relevant information placed before it on that matter, including material related to post-January 7, 2005 LES submissions.

June 2005 Order at 14.

the LES cost estimates will already be admissible under the contention as currently admitted. Overall, therefore, the late filing criteria weigh against admission of this contention.

D. Admissibility of NIRS/PC's Supplement (D) to EC-5/TC-2

NIRS/PC's allegations in Basis D that LES's cost estimates are insufficient due to LES's failure to consider certain factors, are merely restatements of cost estimate factors that NIRS/PC has previously raised and the Board has already admitted to the extent they are material or rejected due to immateriality. NIRS/PC's arguments that (1) LES's cost estimates must consider that DU should be converted to DUO_2 , put into a ceramic form, and placed in a deep geological repository; (2) scaling is necessary when using the Lawrence Livermore National Laboratory costs for the deconverting DU generated by the proposed NEF, (3) exchange rates must account for future rate fluctuations, (4) NRC regulations fail to properly account for newly identified risks, such as health effects from uranium; and (5) hypothetical delays associated with obtaining a license may be experienced by LES, motion at 25-26, were all raised in its May 16²⁵ and 20²⁶, 2005 motions. Late-Filed Motion B at 8, 15-23; Late-Filed

²⁵ NIRS/PC argued:

. . . LES has not shown that its cost estimates account for several factors that must be considered in estimating the cost of dispositioning of depleted uranium, including the likely unsuitability of depleted uranium for near-surface disposal, scaling of cost estimates to fit facilities that would meet the needs of the NEF, exchange rate uncertainties, emerging scientific information on potential uranium risks, and licensing delays.

Late-Filed Motion B at 8.

²⁶ NIRS/PC asserted:

This additional information is clearly inadequate to justify reliance on LES's cost estimates. The deconversion costs are said to be based upon a submission by Cogema and additional proprietary studies by Urenco. None of these materials, nor the details concerning calculations carried out by LES starting from these reports, have been further identified, produced, or provided for the docket so that the validity of the estimates as they relate to this case can be assessed. Nothing of substance has been added to LES's inadequate submission of April 8, 2005. There is no basis upon which the Commission could evaluate the

Motion C at 6-8. Regarding the May 2005 motions, the Board ruled:

The current amendments/supplements proffered by NIRS/PC, to the degree they relate to material matters that are within the scope of this proceeding, add nothing to that previously-admitted amendment that requires further rewording of the contention.

June 2005 Order at 14. The Board further explained in a footnote:

In this regard, the health effects concerns NIRS/PC again seeks to raise in both their May 16 and May 20 filings . . . are an impermissible challenge to the Commission's regulations (as the Board noted in its May 3 ruling, see May Late-Filing Ruling at 13 n.13). Moreover, the NIRS/PC concern about currency conversion . . . appears to lack materiality given the parties' indication in their May 23 joint report that they intend to provide dispositioning costs in 2004 dollars. See Joint Report in Response to the Licensing Board's May 3, 2005 Administrative Directives (May 23, 2005) at 2 [hereinafter May 23 Joint Report]. Further, NIRS/PC's failure to demonstrate adequately the materiality of their purported concerns regarding DOE program and licensing delay costs . . . is fatal to the admissibility of those matters as well. Thus, none of these subjects is litigable in the context of this contention.

June 2005 Order at 14 n.13. In its latest motion, NIRS/PC has failed to offer any new support, facts, or issues that would add to the previously admitted contention or establish materiality. Supplement D should therefore be rejected because the Board has already established the materiality or immateriality of these issues and admitted or rejected them based on the materiality findings.

E. Application of the Late Filing Criteria to NIRS/PC's Supplement (E) to Contention EC-5/TC-2

With regard to this supplemental basis, NIRS/PC claims that it has good cause for filing now because it is based on a DOE cost estimate which was not provided until June 2005.

adequacy of the treatment of such fundamental matters involving LES's estimate of deconversion costs as: . . .

8. Adjustments involving the scale and lifetime of the deconversion facility
9. Adjustments involved in "Americanizing" the project
10. Currency exchange adjustments

Late-Filed Motion C at 6.

NIRS/PC Motion at 35. Additionally, NIRS/PC states that it has good cause for raising issues with regard to the feasibility of using Envirocare as the site for disposal because they are based on recent changes to state law and the Enviorcare license. *Id.* Finally, NIRS/PC claims that it has good cause to the extent the contention is based on issuance of the SER and the FEIS and the Staff's acceptance of the estimate. *Id.*

To the extent that NIRS/PC's contention is based on the DOE cost estimate provided by LES on June 6, 2005,²⁷ good cause has been established for filing contentions challenging that estimate at this time and factor (i) weighs in favor of admission. With respect to NIRS/PC's challenge to DOE's reliance on Envirocare for disposal, as discussed above in regard to Contention EC-3/TC-1, the only new information available to NIRS/PC is an amendment to the Envirocare license. Thus, NIRS/PC has good cause only to the extent that the new basis is premised on that amendment and late filing criteria (i) only weighs in favor of admission of that aspect of the supplemental basis. With regard to the remaining factors governing admission of late filed contentions, these supplements relate to an issue which is the subject of the upcoming hearing and therefore would not unduly broaden the issues or delay the proceeding and factor (vii) weighs in favor of admission. Because NIRS/PC's interests will be protected to the extent it will already be litigating a contention relating to costs, factors (v) and (vi) weigh against admission. However, as discussed below, NIRS/PC has advanced two admissible issues and therefore the last factor - the extent to which their participation will contribute to a sound record - weighs in favor of admission to the extent that NIRS/PC has offered an admissible supplement to this contention. Upon considering all of these factors, the late filing criteria weigh in favor of admission of supplemental basis (E) to the extent it is supported by subsection

²⁷ Letter from R. M. Krich to Director, Office of Nuclear Material Safety and Safeguards regarding Transmittal of Department of Energy Report, June 6, 2005 (ADAMS Accession Number ML051660276).

(a), claiming that the costs associated with disposition of HF have not been considered and (f) regarding the need for a contingency factor. With regard to the remaining claims supporting this basis, *i.e.*, subsections (a) and (c) to (e), the late filing criteria weigh against admission.

F. Admissibility of NIRS/PC's Supplement (E) to EC-5/TC-2

The first issue NIRS/PC raises in support of this supplemental basis is the claim that DOE may not rely on Envirocare to dispose of DU after conversion. In support of this claim, NIRS/PC relies on the same arguments they raised in support of Contention EC-3/TC-1(E). NIRS/PC Motion at 32. For the reasons explained above in connection with that claim, NIRS/PC has failed to proffer an admissible contention.

NIRS/PC also raise a number of issues related to the DOE cost estimate. First, they take issue with an alleged assumption in the DOE report that no costs are associated with the disposition of hydrofluoric acid. NIRS/PC Motion at 32-33. In support of this claim, NIRS/PC cites to the DOE report and the 1997 Lawrence Livermore Report which was cited in the original LES application. This is sufficient to support NIRS/PC's contention and therefore raises an admissible basis for this contention.

NIRS/PC also claims that the DOE report erroneously assumes that costs of future operation, maintenance, and decontamination and decommissioning costs will remain unchanged regardless of whether the operating life of the DOE facilities will be extended. However, NIRS/PC cites to no portion of the DOE report to support this claim. NIRS/PC Motion at 33. Likewise, NIRS/PC cites to no basis for its claim that such costs will increase. *Id.* Therefore, this basis is not sufficiently grounded in factual support or expert opinion and therefore should be rejected.

Next, NIRS/PC states that DOE is only requiring LES to pay a pro rata share of capital and decontamination and decommissioning costs and argues that this "is an unrealistic contractual approach and one that DOE, acting for the taxpayers, is not likely to agree with."

NIRS/PC Motion at 33. However, this is the cost estimate *prepared and submitted by DOE*.

It would be absurd to litigate in this proceeding the question of whether DOE would agree to the very cost estimate it has submitted to LES.

NIRS/PC also states that the DOE cost estimate does not include the cost of storage of DUF_6 pending conversion. However, the cost estimate does in fact account for such costs, designated as “surveillance and maintenance costs” of \$0.003 per kg. DOE Estimate at Table 2-2 and Table 2-5.²⁸ Thus, this basis fails to provide adequate factual support to be admissible.

Lastly, NIRS/PC claims that the DOE cost estimate is inadequate because it fails to include a contingency factor to account for uncertainty as called for under Commission guidance. This claim also raises an admissible basis to supplement contention EC-5/TC-2.

V. Contention EC-9

NIRS/PC offers the following proposed contention:

The Final Environmental Impact Statement does not comply with the National Environmental Policy Act, 42 USC 4321 et seq., or Commission regulations, 10 CFR 51.71, 51.91, in that it fails to set forth any analysis of the environmental impacts of disposal of depleted uranium waste from the proposed facility in accordance with the proposed action and appropriate alternatives. The analysis at pages 4-62 through 4-64 of the FEIS is based upon erroneous or outdated assumptions concerning the Envirocare facility or relates to a deeply flawed analysis of a proposal to dispose of depleted uranium in an abandoned mine, which is not now the Applicant’s apparent proposal. In any case the purported analysis of hypothetical disposal sites, which are both technically incredible and irrelevant to understanding the impacts of the proposed action or appropriate alternatives. Moreover, the detailed technical bases for these calculations were not presented in the FEIS and are apparently no longer available even to NRC Staff.

NIRS/PC Motion at 35-36.

²⁸ The fact that this number refers to storage is confirmed in the March, 2005 letter from DOE to LES, stating that storage costs would be \$0.003 (Letter from Paul M. Golan to Rod Krich, March 1, 2005 ADAMS Accession No. ML050960429).

A. Application of the Late Filing Criteria to NIRS/PC's Proposed Contention EC-9

In its proposed contention, NIRS/PC claims the FEIS does not comply with NEPA or Commission regulations because it fails to set forth any analysis of the impacts of disposal of DU in accordance with the proposed action. Additionally, NIRS/PC argues that the analysis in the FEIS is based on erroneous or outdated assumptions. As for the FEIS analysis of the option of disposal in an abandoned mine, NIRS/PC argues that this is not now an option being considered by the applicant and, moreover, is technically incredible and irrelevant and is supported by data which is not longer available to the Staff.

Late-filed contentions based on a FEIS which follows a DEIS should be subject to the standard set forth in under 10 C.F.R. § 2.309(f)(2), which provides:

On issues arising under the National Environmental Policy Act, the petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement . . . that differ significantly from the data or conclusions in the applicant's document.

In the case, such as here, where an intervenor had the opportunity to file contentions on a DEIS, new contentions should only be permitted if based on matters in the FEIS which differ significantly from the data or conclusions in the DEIS. As discussed below, NIRS/PC has failed to meet this burden.

NIRS/PC claims that it has good cause for filing this new contention because it could not have been advanced until "(a) LES suggested that it intends to dispose of DU at the WCS site and (b) Commission Staff indicated its preference in the FEIS, issued June 15, 2005, that the Envirocare site should be considered the preferred disposal site." NIRS/PC Motion at 39-40. With regard to the first argument, this Board has already determined that NIRS/PC was on notice as early as January 2005, that LES was considering the option of using WCS as a

disposal site and that a contention filed in May based on that information was untimely. July 2005 Order at 8-9. Thus, NIRS/PC does not have good cause for filing yet another contention based on this contention at this time.

As for NIRS/PC's claim that the FEIS expressed the Staff's preference that Envirocare be used for disposal, this is incorrect and not premised upon any material in the FEIS. As in the DEIS, the Staff discussed a number of disposal options available for both private sector and DOE disposal, and notes that Envirocare is *an example* of a disposal site licensed to accept the DU after it is deconverted. FEIS at 2-33. Thus, NIRS/PC has not established that this contention is based on new information in the FEIS.

NIRS/PC also states that this contention is timely based on a series of other reasons, including claims that (1) it is based on a recent change in control of Envirocare and changes in state law and the Envirocare license, (2) it has only recently emerged that shallow land disposal at WCS is LES's preferred strategy, and (3) the Staff has failed to present the technical bases for calculations (apparently referring to Table 4-19) in the FEIS. With regard to Envirocare, NIRS/PC does not explain how any changes to state law or the Envirocare license support a conclusion that the FEIS is deficient. Similarly, the fact that LES is considering WCS is not new,²⁹ and is not connected by NIRS/PC to any alleged deficiency in the Staff's NEPA analysis. Finally, the Staff calculations NIRS/PC disputes were in Table 4-19 "Maximum Annual Exposure from Postulated Geologic Disposal Sites" found in the DEIS, at 4-59, and repeated verbatim in the FEIS, at 4-64.

For these reasons, factor (i), good cause for late filing, weighs against admission of this contention. NIRS/PC has already had the opportunity to raise contentions regarding the LES application and the Staff's DEIS, and to participate in a hearing on its environmental

²⁹ In fact, disposal at WCS was specifically considered in the Staff's DEIS. DEIS at 2-32

contentions. Therefore, NIRS/PC's interests in ensuring the adequacy of the Staff's NEPA review has been protected and factors (v) and (vi) also weigh against admission. Furthermore, allowing additional environmental contentions to be admitted at this point would clearly broaden the issues before the Board and factor (vii) weighs against admission. Finally, with regard to the last factor, as discussed below NIRS/PC's proffered contention does not raise an admissible issue in this proceeding. Therefore, all of the late-filing factors weigh against admission of this contention.

B. Admissibility of NIRS/PC's Proposed Contention EC-9

In proposed EC-9, NIRS/PC asserts that the Staff's FEIS does not comply with NEPA or the Commission's regulations because it fails to set forth any analysis of the environmental impacts of disposal of DU in accordance with the proposed action and appropriate alternatives. However, the FEIS -like the DEIS -contains a discussion of the disposal options available to LES. FEIS at 2-31 to 2-33. Impacts from disposal are discussed at 4-63, where the Staff noted that for shallow land disposal, the environmental impacts would have been assessed at the time of license approval for the disposal site or at the time of any amendment permitting disposal of the material. The resulting environmental impacts were found to be small. *Id.*

Thus, it is clear that the Staff took into account the environmental impacts of disposal of DU, including those for shallow land disposal. To the extent that NIRS/PC is attempting to argue that the Staff is obligated to perform site-specific analyses for WCS and Envirocare, NIRS/PC is asking that this Board direct the Staff to perform analyses which are within the purview of the states. As noted above, WCS is licensed by the state of Texas. Envirocare, as noted in the FEIS at 4-63, is licensed by the state of Utah. Because those licenses govern the disposal of any waste at those facilities, any site specific environmental analysis is within the state's jurisdiction and is not the obligation of the NRC Staff. This is entirely consistent with the approach taken by DOE, which states in the Paducah EIS:

The disposal facility would be (1) selected in a manner consistent with DOE policies and orders and (2) authorized or license to receive the conversion products by either DOE (in conformance with DOE orders), the NRC (in accordance with NRC regulations), or an NRC Agreement State agency (in conformance with state laws and regulations determined to be equivalent to NRC regulations). Assessment of the impacts and risks from on-site handling and disposal at the LLW disposal facility is deferred to the disposal site's site-specific NEPA or licensing documents.

Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Paducah, Kentucky, Site at 2-25. Further, the Staff's position on this issue did not change from the time of the DEIS to the FEIS. Indeed, as the Staff states in the FEIS, the environmental impacts of shallow land disposal are determined at the time the specific site is licensed or its license is amended to permit disposal. FEIS at 4-63.

With regard to NIRS/PC's claim that the FEIS is based on erroneous or outdated assumptions concerning the Envirocare facility, NIRS/PC appears to rely only on its misinterpretation of the recent license amendment. NIRS/PC Motion at 38. With regard to the mine disposal option, NIRS/PC claims that the Staff does not adequately support its analyses at the same time that it argues that this option is now irrelevant and incredible. Thus, by its own admission, NIRS/PC is raising an issue which, if NIRS/PC claims are accepted, would be immaterial to the assessment of environmental impacts of the facility. Thus, for all the reasons stated above, NIRS/PC's contention should be rejected for the additional reason that it does not raise an issue which is admissible in this proceeding.

CONCLUSION

For the reasons set forth above, only two aspects of NIRS/PC supplemental basis (E) to Contention EC-5/TC-2 are admissible under the factors that govern the admission of late-filed contentions and the Commission's standards for admissibility of contentions.

Respectfully submitted,

/RA/

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Counsel for NRC Staff

Dated at Rockville, Maryland
this 20th day of July, 2005

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
LOUISIANA ENERGY SERVICES, L.P.)	Docket No. 70-3103
)	
(National Enrichment Facility))	ASLBP No. 04-826-01-ML
)	

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF RESPONSE TO MOTION ON BEHALF OF INTERVENORS NUCLEAR INFORMATION AND RESOURCE SERVICE AND PUBLIC CITIZEN FOR ADMISSION OF SUPPLEMENTAL AND ADDITIONAL LATE-FILED CONTENTIONS UNDER 10 C.F.R. 2.309(c)" in the above-captioned proceedings have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), and by electronic mail as indicated by a double asterisk (**) on this 20th day of July, 2005.

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